

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

ROGER D. HALL, et al.,

Plaintiffs,

Civil No. 12-275-CL

v.

REPORT AND
RECOMMENDATION

OREGON DEPARTMENT OF
CORRECTIONS.,

Defendant.

CLARKE, District Judge.

Three inmates in the custody of the Oregon Department of Corrections filed a complaint alleging violations of their rights arising out of the imposition of restitution as a disciplinary sanction. Complaint (#3).

Plaintiffs are advised that they may not proceed as joint plaintiffs in this matter. Because none of the individuals have signed the pleadings as required by the rules, and only Mr. Hall has submitted a certificate of funds in inmate's account, I deem Mr. Hall as the plaintiff in this case. If

Mr. Poole and/or Mr. Chavez wish to proceed, they must file separate pleadings and their cases will proceed individually and separately from this case. The Clerk of the Court is requested to send Mr. Poole and Mr. Chavez application to proceed in forma pauperis.

Plaintiff Hall's Certificate of Funds in Inmate's Account (#8) is construed as an application to proceed in forma pauperis and is allowed subject to further review by the court. However, for the reasons set forth below, plaintiff's complaint should be dismissed without service of process on the grounds that it is frivolous and fails to state a claim upon which relief can be granted.

The alleged facts giving rise to plaintiff's claim in this case are exactly the same as those alleged in Civ. No. 11-493-CL. In a Report and Recommendation (#26) entered 10/7/2011, this court recommended that defendants' Motion for summary judgment in 11-493-CL be allowed on the grounds that plaintiff's claims were barred by the doctrine of *res judicata*.

After *de novo* review the Report and Recommendation was adopted by Judge Panner's Order (#48) entered February 3, 2012. A judgment of dismissal (#50) was entered on 2/3/2012.

Plaintiff's claim in this case should be denied for the reasons set forth in the court's Report and Recommendation in Civ. No. 11-493-CL. That Report and Recommendation is attached.

Plaintiff's Motion for Appointment of Counsel (#4) should be denied as moot. Plaintiff's Motion for Stay (#8) should be denied as moot.

This case should be dismissed with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen

(14) days within which to file a response to the objections. Failure to timely file objections to any factual determination of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 1 day of March,, 2012.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', written over a horizontal line.

Mark D. Clarke
United States Magistrate Judge